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RESTRICTIVE TRADE PRACTICES COMMISSION

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REPORT

Concerning an Alleged Combine in the Distribution and Sale of Coal
in the Timmins-Schumacher Area



DEPARTMENT OF JUSTICE
OTTAWA

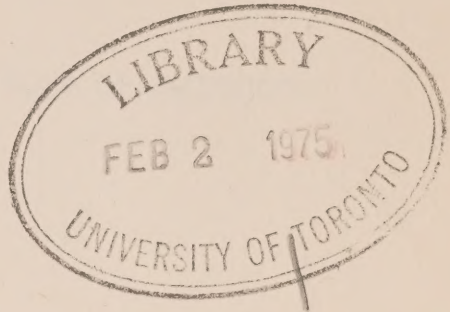


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OTTAWA, 1954

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RESTRICTIVE TRADE PRACTICES COMMISSION


REPORT



CONCERNING AN ALLEGED COMBINE IN THE
DISTRIBUTION AND SALE OF COAL IN THE
TIMMINS-SCHUMACHER AREA

COMBINES INVESTIGATION ACT

Ottawa
1954



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RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

Guy Favreau, Q. C., B.A., LL.B.	A. S. Whiteley, B.A., M.A.
Member	Member

RESTRICTIVE TRADE PRACTICES COMMISSION

Room 451, Justice Building,
Ottawa, November 22, 1954.

Honourable Stuart S. Garson, Q.C.,
Minister of Justice,
Ottawa, Ontario.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with an alleged combine in the distribution and sale of coal in the Timmins-Schumacher area.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Act.

Argument on the Statement of Evidence was heard by the Commission at Timmins on March 29, 1954 and at Toronto on April 2, 1954. Counsel appearing on behalf of the parties mentioned in the Statement of Evidence were Messrs. G. Evans and H. Moscoe at Timmins and Jos. Sedgewick, Q.C. and L. V. Sutton, Q.C. at Toronto. Messrs. J. J. Quinlan and J. D. Wentzell appeared for the Director of Investigation and Research on both occasions.

Yours faithfully,

(Sgd.) C. R. Smith
Chairman

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry was brought before the Restrictive Trade Practices Commission under Section 18 of the Combines Investigation Act, R.S.C. 1952, Chapter 314, which reads as follows:

"18. (1) At any stage of an inquiry,

- (a) The Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section 32 or 34 of this Act, or section 498 or 498A of the Criminal Code, and
- (b) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry, which shall be submitted to the Commission and to each person against whom an allegation is made therein.

(2) Upon receipt of the statement referred to in subsection (1), the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.

(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection (1) together with such further or other evidence or material as the Commission considers advisable.

(4) No report shall be made by the Commission under section 19 or 22 against any person unless such person has been allowed full opportunity to be heard as provided in subsection (2)."

Hearings for the taking of evidence in the inquiry were held, on application by the Director of Investigation and Research under the Combines Investigation Act, before Mr. Guy Favreau, a Member of the Commission, during July, 1953, at Timmins, Toronto and Haileybury. The following witnesses were examined at the sessions indicated:

Timmins, July 14, 15 and 16

George Blitva, Mirkovich Coal Yard, Schumacher, Ontario
Theodore Byck, Frank Byck & Son, Timmins, Ontario
A. J. R. Chalifoux, Timmins, Ontario
J. P. Downey, John W. Fogg Limited, Timmins, Ontario
Wesley Dundas)
Reginald Dundas) Dundas Bros., Timmins, Ontario
Herbert Eden, Gold Centre Fuels, Schumacher, Ontario
C. M. Haapanen, Consumers' Co-Operative Society Limited,
Timmins, Ontario
C. E. Holland, Superior Fuels, Timmins, Ontario
A. E. Minard, Timmins, Ontario
S. J. Mainville, Chaput's Woodyard, Timmins, Ontario

Toronto, July 17 and 29

J. F. Brooke, Empire Hanna Coal Division, The M. A.
Hanna Company, Toronto, Ontario
D. H. Easton, Halliday Fuels Limited, Toronto, Ontario
C. C. Taylor, W. J. Taylor & Son, Belleville, Ontario

Haileybury, July 28

A. R. Herbert, Herbert Fuels Limited, Cobalt, Ontario

On February 16, 1954, the Director of Investigation and Research submitted to the Restrictive Trade Practices Commission, a Statement of Evidence, which contained the following general allegations:

- (a) The evidence discloses that during the period from April of 1947 to the date of hearings in July 1953 the companies and persons named in paragraph 6 [of the Statement of Evidence] have been parties or privy to and have knowingly assisted in the formation and operation of a combine, within the meaning of the Combines Investigation Act, having relation to the distribution and sale of coal in the Timmins-Schumacher area (sometimes referred to as the Porcupine Camp area) in the Province of Ontario. The said combine was by way of arranging to form and forming an Association for the purpose of bringing about uniformity and eliminating competition, and by way of agreeing upon and bringing about such uniformity and elimination of competition, in respect of the following matters:
- (i) retail prices of coal including prices of small-lot sales and deliveries to out-of-town points and including special prices for summer sales and the period and delivery dates to which such prices would apply;

- (ii) margins over cost for handling coal;
 - (iii) methods of computing prices and margins;
 - (iv) various incidental terms and conditions of sale as related in the subsequent paragraphs.
- (b) The said combine has operated and is likely to operate to the detriment or against the interest of the public by depriving the public of the benefits of competition to which by law it is entitled.
- (c) The evidence also discloses that the companies and persons named in paragraph 7 [of the Statement of Evidence] were parties to the combine in that they, for the purposes thereof and upon the instructions of the Association, refused to supply and discontinued supplies to certain coal dealers because such dealers failed to adhere to the prices and other terms and conditions of sale fixed by the Association.

2. Parties Mentioned in the Statement of Evidence

Paragraph 6 of the Statement of Evidence contained the names and descriptions of the following companies and persons doing business in the Timmins-Schumacher area during part or all of the period from April, 1947 to July, 1953:

John W. Fogg Limited, an incorporated company,
(sometimes referred to herein as "Fogg") --
Timmins, Ontario

Consumers' Co-Operative Society Limited, an incorporated
company, (sometimes referred to herein as "Consumers'
Co-Op") --
Timmins, Ontario

Theodore Byck, doing business under the firm name and
style of Frank Byck & Son, (sometimes referred to herein
as "Frank Byck") --
Timmins, Ontario

George Blitva, doing business under the firm name and
style of Mirkovich Coal Yard, (sometimes referred to
herein as "Mirkovich") --
Schumacher, Ontario

Albert Chalifoux, doing business under the firm name and
style of Albert Chalifoux, Coal Dealer, (sometimes referred

to herein as "Albert Chalifoux") --

Timmins, Ontario

Simon J. Mainville, doing business under the firm name and style of Chaput's Woodyard, (sometimes referred to herein as "Chaput's") --

Timmins, Ontario

Emery Mainville, doing business under the firm name and style of Emery Mainville, Dealer in Coal, Wood and Slabs, (sometimes referred to herein as "Emery Mainville") --

Timmins, Ontario

Reginald Dundas and Wesley Dundas, doing business under the firm name and style of Dundas Bros., Coal Dealers, (sometimes referred to herein as "Dundas Bros.") --

Timmins, Ontario

Herbert Eden, doing business under the firm name and style of Gold Centre Fuels, (sometimes referred to herein as "Gold Centre Fuels") --

Schumacher, Ontario

C. E. Holland, doing business under the firm name and style of Superior Fuels, (sometimes referred to herein as "Superior Fuels") --

Timmins, Ontario

A. Edison Minard, doing business under the firm name and style of A. E. Minard, Coal Dealer and Building Contractor, (sometimes referred to herein as "Minard") --

Timmins, Ontario

W. B. Brewer, doing business under the firm name and style of Northern Fuels, (sometimes referred to herein as "Northern Fuels") --

Timmins, Ontario

George Rousson and Albert Rousson, doing business under the firm name and style of Diamond Coal Company Limited, (sometimes referred to herein as "Diamond Coal") --

Timmins, Ontario

Paragraph 7 of the Statement of Evidence contained the names and descriptions of the following wholesalers:

Empire Hanna Coal Division, The M. A. Hanna Company, an incorporated company, (sometimes referred to herein as "Empire Hanna"), with head office at 1300 Leader Bldg.,

Cleveland, Ohio, and registered office in Canada at
805 Canadian Pacific Building, 69 Yonge Street, Toronto,
Ontario

W. J. Taylor and C. C. Taylor, doing business under the
firm name and style of W. J. Taylor & Son, (sometimes
referred to herein as "Taylor and Son"), Belleville, Ontario

3, Proceedings before the Restrictive Trade Practices Commission

In accordance with Section 18(1) of the Combines Investigation Act, the Statement of Evidence submitted to the Restrictive Trade Practices Commission was also submitted to each of the persons against whom an allegation was made therein. The Commission, by an order dated March 2, 1954, fixed Monday, March 29, 1954, at 10 o'clock in the forenoon, in the Court Room, Municipal Building, in the City of Timmins, Ontario, and Friday, April 2, 1954, at 10 o'clock in the forenoon, in No. 4 Court Room, City Hall, in the City of Toronto, Ontario, as the dates, times and places at which argument in support of the Statement of Evidence could be submitted and at which persons against whom any allegation had been made in such Statement would be allowed full opportunity to be heard in person or by counsel, the whole in compliance with Section 18(2) of the Act. In giving notice thereof, the Commission further informed the parties that at such hearings they would have the opportunity of further examining any witness who had been called during the course of the inquiry or of having called any additional witnesses or of submitting additional documentary evidence.

At the hearing at Timmins on March 29, 1954, the following appearances were entered:

J. J. Quinlan, Esq., and
J. D. Wentzell, Esq.

For the Director of
Investigation and Research

G. Evans, Esq.

For all of the companies and
individuals mentioned in para-
graph 6 of the Statement of
Evidence except Albert Chalifoux
and W. B. Brewer

H. Moscoe, Esq.

For Albert Chalifoux

At the hearing at Toronto on April 2, 1954, the following
appearances were entered:

J. J. Quinlan, Esq., and
J. D. Wentzell, Esq.

For the Director of
Investigation and Research

Jos. Sedgewick, Esq., Q.C. and	For the Empire-Hanna Coal
L. V. Sutton, Esq., Q.C.	Division, The M. A. Hanna Company

Although given notice of the hearings in the same way as the other parties, W. B. Brewer and W. J. Taylor and C. C. Taylor did not appear and were not represented by counsel at either hearing held by the Commission. Certain documentary evidence was received at the hearing in Timmins, and J. F. Brooke and Albert Chalifoux gave further evidence at the hearing in Toronto.

4. Position on the Merits of the Case Taken by the
Respective Parties at the Hearing for Argument

Although it was not stated specifically on behalf of any of the parties represented at the hearing for argument whether issue was taken with the facts as recited in the Statement of Evidence, it appears from the argument of counsel that the representations were directed primarily to the conclusions therein. The positions taken respectively by the parties appearing may be stated summarily as follows:

- (1) On behalf of the coal dealers mentioned in paragraph 6 of the Statement of Evidence, it was represented that whatever activities may have been engaged in by the group of dealers did not result in detriment to the public. Very small profits were obtained, and, in some cases, there was a loss. The group did not prevent anyone from entering the coal business, although it was not denied that on one occasion, on the recommendation of the group, supplies of coal were withheld from one dealer by one wholesaler, and that the dealer's position was not restored until he had stated that he would sell at the price of the group. It was contended, however, that supplies of coal were available from other sources and that the evidence did not establish that the actions of the group lessened competition. It was contended both that uniformity in price was to be expected, because of the nature of the trade, and that, during the period of group activity, there was variation in price on a competitive basis.
- (2) It was further represented, on behalf of Albert Chalifoux, that the activities of the group of dealers were subject, in large measure, to the direction of a few large dealers, and that the larger number of dealers, including Albert Chalifoux, did not shape its policies.
- (3) It was contended, on behalf of the Empire Hanna Coal Division, The M. A. Hanna Company, that the company

acted independently in selecting customers with whom it would deal, and has not agreed with any other importer or wholesale dealer or with any association of merchants in the way described in the Statement of Evidence.

CHAPTER II

RETAIL COAL TRADE IN THE TIMMINS-SCHUMACHER AREA

A general outline of the coal business in the Timmins-Schumacher area was given in the Statement of Evidence, and, as no question was raised in regard to this outline, it has been used as the general basis for the present section.

In the Timmins-Schumacher area, which has a combined population of approximately 32,000, the retail coal business has been carried on, during the past five years, by about ten dealers. All but two of these dealers have had their places of business in Timmins, but dealers generally accept orders for both Timmins and Schumacher without distinction.

Firms engaging in the coal business in Timmins are required to be licensed under by-law No. 679 of The Corporation of the Town of Timmins, which provides in paragraph 3 as follows:

"No license shall be granted to any person, firm or corporation unless he shall have the proper facilities for dealing in coal or coke, including a suitable yard and buildings to protect the coal and coke from the weather of a capacity of not less than one hundred tons."

(Exhibit 125)

This appears to be the only condition, apart from a licence fee of \$5, placed upon prospective dealers, and, as the minimum storage capacity required is approximately equal to two carloads, it would offer little difficulty to anyone considering seriously entering the coal business. It is not shown by the evidence whether the Town of Schumacher has a similar by-law.

The following table was appended to the Statement of Evidence to show the volume of retail coal sales in the Timmins-Schumacher area in each year during the period 1947 to 1953, inclusive, and the sales made by the dealers mentioned in paragraph 6 of the Statement of Evidence:

Retail Coal Sales in the Timmins-Schumacher Area

	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>1950</u>	<u>1951</u>	<u>1952</u>	<u>1953</u>
	tons	tons	tons	tons	tons	tons	tons
Sales by Parties							
Named in Paragraph 6 of the Statement of Evidence	32,217	32,363	34,135	38,061	37,379	34,924	30,240
All Other Retail Sales	<u>2,097</u>	<u>2,288</u>	<u>1,721</u>	<u>832</u>	<u>657</u>	<u>1,132</u>	<u>624</u>
Total Sales	34,314	34,651	35,856	38,893	38,036	36,056	30,864

Source: Dominion Bureau of Statistics

It will be seen that, at the beginning of the period, more than 90%, and, at the end of the period, more than 95%, of the retail coal sales have been made by the dealers mentioned in paragraph 6 of the Statement of Evidence. At the end of the period, sales by four dealers, John W. Fogg Limited, Frank Byck & Son, Albert Chalifoux and Mirkovich Coal Yard accounted for more than 70% of the total sales shown in the above table.

In addition to being the largest retail coal dealer in the Timmins-Schumacher area, John W. Fogg Limited has been engaged to an equal or greater extent as a wholesaler of coal, and has even larger operations in lumber and timber. Although John W. Fogg Limited is the only wholesaler among the coal dealers in the Timmins-Schumacher area, its wholesale business consists largely in supplying large industrial users, such as gold mines. Other retail dealers do not customarily purchase supplies of coal from John W. Fogg Limited except when their requirements cannot be met readily from normal sources of supply, as they prefer to buy from mine agents or directly from coal producers, if possible.

The varieties of coal handled by retail dealers in the Timmins-Schumacher area are described as follows in the Statement of Evidence:

"Coals of nearly all types and brands are sold in this area including anthracite, bituminous, semi-bituminous and coke but no lignite. Each one of these classifications, except coke, is sold in different forms such as lump, stove, egg, nut, pea, stoker or slack, depending on its ultimate use. The coals mined in the United States and imported are, generally speaking, anthracite and bituminous, in the various sizes mentioned, whereas the Canadian coal, all obtained from western Canada, is bituminous.

Some Welsh anthracite is sold as well in this area. There are also specialties such as briquettes, made of either American anthracite or Canadian bituminous and Pres-to-logs for fire-place use. The amount of Canadian coal sold by Timmins-Schumacher dealers is equal to or slightly greater than that imported from the United States. It is not uncommon for different dealers to supply coal of the same quality and size under their own, different, brand names. An example of this is Eureka and Blu-Glo stoker coals. In his evidence, D. H. Easton, President, Halliday Fuels Ltd., said that both of these coals were identical in analysis, but for selling purposes one dealer called it Eureka and another Blu-Glo and they billed it under the brand name (Evidence, pp. 158, 467-73 and 657)."

Shipments of coal to dealers in the Timmins-Schumacher area are made directly from the mines in the United States or Western Canada in railway cars, or, in the case of some purchases of American coal, from stock piles in the Georgian Bay district. During the period of lake navigation, considerable quantities of American coal are imported by the producers or their selling agents in Canada and are stored at Midland on Georgian Bay or at the more northerly point of Britt, which is on Byng Inlet. While shipments of coal may be made to the dealer from such stock piles or directly from the mine in the United States, his laid-down cost may differ very little, if at all.

Shipments of coal from Western Canada to dealers in the Timmins-Schumacher area are normally made by direct rail movement from the mines. For some years freight subventions have applied on shipments of western coal to eastern markets, and the dealer pays the net cost, that is, the freight less the amount of the subvention - the latter is paid to the railway by the Government. During the period covered by the inquiry, the subvention for all deep-mined coals delivered to the Timmins-Schumacher area from Western Canada has been \$3.00 per ton, and, on coal from strip mines, \$2.50 per ton. The freight rates have changed from time to time during the period, and, when the hearings were held, the rate was \$10.45 per ton.

CHAPTER III

ARRANGEMENTS TO ESTABLISH UNIFORM SCALE OF RETAIL COAL PRICES

1. Organization of Retail Coal Group

The evidence indicates that about 1943 tentative steps were taken toward the organization of retail coal dealers in the Timmins-Schumacher area, but nothing developed from the attempts made at that time.

In the spring of 1947, a meeting of ten coal dealers is shown as having been held in the Empire Hotel, Timmins, (Exhibit 16) and it is indicated that agreement was reached as to a common method of establishing retail prices and on common conditions of sale. The dealers shown as attending this meeting, which took place on or about April 23, 1947, were the dealers mentioned in paragraph 6 of the Statement of Evidence, with the exception of Herbert Eden (Gold Centre Fuels), who commenced business in 1949; A. E. Minard, who commenced business in 1952; and George Rousson and Albert Rousson (Diamond Coal), who bought the coal business of W. B. Brewer (Northern Fuels) in 1950.

It appears from the evidence that, from the time of the first meeting of the coal dealers in 1947, a representative of John W. Fogg Limited has almost always undertaken the duties of arranging for meetings of the group and the agenda, and for the circulation among the dealers of information as to common basis of prices and conditions of sale and of lists of retail prices worked out on such common basis. The record of the meeting, under date of April 23, 1947, (Exhibit 16) has the signature "M. R. Porter, Secretary, pro tem". This person was identified as Miss M. R. Porter, then secretary-treasurer of John W. Fogg Limited but no longer with this company. Some time in 1948, J. P. Downey, who had been engaged since 1946 in other branches of John W. Fogg Limited, became employed in the coal department of the company, and thereafter assumed the duties referred to above. It would appear that the work of sending out notices of meetings and circulating the results of discussions thereat was undertaken by the Fogg representative because of that company's interest in maintaining co-operation among the group of coal dealers, and because this company had the necessary office facilities for the preparation and circulation of material and for the accommodation of dealer meetings, which were almost always held on the premises of John W. Fogg Limited.

No attempt appears to have been made to establish any formal organization among the coal dealers in the Timmins-Schumacher area. There has been no constitution or slate of officers. No dues were paid, no records kept of attendances at meetings and no minutes taken down. Meetings were not held regularly, but usually not less than three or four meetings were held each year. Copies of several notices of meetings circulated by J. P. Downey were found on the premises of some of the other dealers. These notices were dated a day or two in advance of meeting, and frequently indicated matters to be discussed. The following exhibits indicate the dates of some of the meetings, if not all, between November, 1950 and July, 1953:

<u>Date</u>	<u>Exhibit Numbers</u>
1950 - November 3	29
1951 - January 9	30
May 16	31 and 32
August 2	33 and 34
August 27	66 and 168
October 23	67 and 169
November 30	68 and 170
1952 - February 29	73 and 172
April 28	74 and 173
May 9	76 and 174
July 18	83, 169, 176 and 184
December 17	178
1953 - May 13	41, 44, 90 and 122
May 21	153 and 181

According to the evidence of the various witnesses, the meetings appear to have been attended most frequently by those dealers carrying on the more extensive coal businesses. Some dealers had other lines of work or trade in addition to their coal businesses which prevented them from attending at all times when meetings were called. Information as to arrangements made at meetings establishing a common basis of arriving at retail prices or as to the retail prices so established was sent to dealers whether they were present at the meeting or not. Mr. J. P. Downey gave the following evidence in regard to his practice of circulating information to dealers:

"Q. Apart from whether or not these meetings were attended regularly by each one of these dealers, in any of these meetings where coal decisions were arrived at after discussion by those who were present, was it your practice to send out to all the dealers in Timmins a record of the decision arrived at?

A. That is right. I endeavoured to keep them informed.

Q. You tried to keep them informed?

A. Yes.

Q. And did that also apply to any price list you made up as a result of these meetings?

A. Yes.

Q. That is, each time a price change was decided upon you made a record of the change and made it into a price list which was distributed?

A. Yes, made it into an information sheet which was mailed -- it was mostly mailed -- to each one of them."

(Evidence, July 15, 1953, p. 281)

2. Establishment of Common Retail Prices

The circular letter of April 23, 1947 (Exhibit 16) to which reference has already been made, indicates that a basis of establishing uniform prices for certain classes of coal had been agreed upon at a meeting of coal dealers. The letter was as follows:

"Timmins, Ont.
April 23, 1947

Frank Byck & Son, Timmins
A. Chalifoux, "
Consumers' Co-op. "
Dundas Bros. "
John W. Fogg Limited "
Mainville, E. "
Mainville, S. J. (Chaput Wood Yard)
Mirkovitch [sic], Schumacher
Northern Fuels, Timmins
Superior Fuels, Timmins

Dear Sirs:

At a meeting of the above mentioned Coal Dealers held in the Empire Hotel, the following points were agreed upon by all those present as regards deliveries and margins on coal:-

1. No deliveries under half-ton lots.
2. Price for half ton orders to be half the regular ton price, plus 50¢.

3. Delivery to South Porcupine and all points on the back road, 50¢ per ton additional.
4. Margin over cost on all domestic coal or coke, bagged - \$4.00 ton.
5. Margin over cost on all stoker coal, delivered loose, in less than carlots - \$3.50 per ton.
Exception - customers who have carload on order but dealer unable to deliver only few loads or part car until carload arrives.

Yours very truly,

(Sgd.) M. R. Porter

Secretary, pro tem."

(Exhibit 16)

It will be noted that in this circular were set out various scales of charges or margins which were to be added to the dealer's selling prices or cost. As direct shipments of coal would normally have the same cost to each dealer for the same kind of coal, the addition of the same charges or margins would mean that each dealer would have the same selling price. Further assistance toward uniformity of retail prices was given by the practice of J. P. Downey in sending out lists of retail prices embracing the various types of coal handled in the Timmins-Schumacher area. Many examples of these price lists are contained among the exhibits, and their general nature may be illustrated by Exhibit 138, which follows:

"RETAIL COAL PRICES

PRICE CHANGE FOR SEPT., 1951

Trade Name	Tons		1/2 Tons		Per Bag	Bags
	Charges	C.O.D.	Charges	C.O.D.	Picked Up Cash	Per Ton
<u>ANTHRACITE - U.S.</u>						
Egg	32.00	31.00	16.50	16.00	1.35	22
Stove	32.00	31.00	16.50	16.00	1.35	22
Chestnut	32.00	31.00	16.50	16.00	1.35	22
Buckwheat	23.25	22.25	12.15	11.65	1.00	22
<u>WELSH EGG</u>						
<u>ANTHRACITE</u>	36.75	35.75	18.90	18.40	1.70	22
<u>BRIQUETTES</u>						
Anthracite - U.S.	27.25	26.25	14.15	13.65	1.15	22
Western Canadian	23.25	22.25	12.15	11.65	.90	24
<u>POCAHONTAS</u>						
Lump	26.50	25.50	13.75	13.25	1.00	23
Egg	26.50	25.50	13.75	13.25	1.00	24
Stove	26.50	25.50	13.75	13.25	1.00	24
<u>U.S. BITUMINOUS</u>						
Robin Hood Lump	23.00	22.00	12.00	11.50	.95	23
Robin Hood Egg	21.50	20.50	11.25	10.75	.95	24
<u>STOKER COAL - U.S.</u>						
Cavalier King	25.25	24.25	13.15	12.65	1.00	24
Cavalier Queen	25.25	24.25	13.15	12.65	1.00	24
X.T. Pea Pocahontas	23.50	22.50	12.25	11.75	.90	24
Crown Royal	23.50	22.50	12.25	11.75	.90	24
Darby	23.00	22.00	12.00	11.50	.90	24
St. Bernard	21.00	20.00	11.00	10.50	.90	24
Sunnyhill	20.25	19.25	10.65	10.15	.90	24
Sunmount	20.00	19.00	10.50	10.00	.90	24
<u>WESTERN CANADIAN</u>						
Bighorn Lump						
Bighorn Egg						
Alexo Lump	24.75	23.75	12.90	12.40	.95	23
Alexo Egg	22.75	21.75	11.90	11.40	.95	24
McLeod Lump	22.75	21.75	11.90	11.40	.95	23
McLeod Egg	21.75	20.75	11.40	10.90	.95	24
Rossdale Lump	21.25	20.25	11.15	10.65	.95	23
Gova Cobbles	19.50	18.50	10.25	9.75	.95	24
Glocoal	21.75	20.75	11.40	10.90	.95	23
<u>COKE</u> - Stove	33.50	32.50	17.25	16.75	.90	40
Chestnut						36
Buckwheat						36
<u>STILCO - ALL PURPOSE</u>	29.75	28.75	15.40	14.90	.90	32
<u>PRES-TO-LOGS</u>	29.50	28.50	15.25	14.75	2/25¢	250 per unit
<u>BARGAIN COAL</u> - from	16.00	15.00	8.50	8.00	.65	24"
Yard Screenings						

(Exhibit 138)

In the case of stoker coal, the setting of a margin over cost, as shown in Exhibit 16, was to apply only in the case of deliveries in less than carlots, and only then when the order had been placed for less than a carload. This meant that in the case of carlot sales of stoker coal no uniform basis of prices had been established and the sales could be made on a competitive basis. This exception is noted here because arrangements with respect to sales of stoker coal, as will be shown later, appear to have been the most difficult to establish and maintain among the group of coal dealers, even though only about five dealers handled stoker coal in substantial quantities.

3. Change in Method of Establishing Common Retail Prices

The method of establishing common retail prices agreed upon in 1947 appears to have been employed until almost the end of 1951. Following a meeting called for November 30, 1951 (Exhibit 68), a new price list was sent out from the office of John W. Fogg Limited with a circular letter, dated December 3, 1951, addressed "To the Coal Dealers of Timmins" and signed by E. V. Hanson for J. P. Downey. The circular letter read as follows:

"Please find enclosed revised coal price list as of December 3, 1951.

Present methods of arriving at selling prices on lump coal is to take the f.o.b. track cost plus \$4.00 per ton, plus 10% to the nearest 25¢; on egg and nut Canadian coals, take the f.o.b. track cost plus \$3.50 per ton, plus 10% to the nearest 25¢; on Pocahontas take the f.o.b. track price and add \$4.50 per ton plus 10% to the nearest 25¢; on Stoker coal, to the f.o.b. track cost add \$3.00 per ton, plus 10% to the nearest 25¢; on Canadian coals the f.o.b. track cost is based on the following: - deep mined coal, \$7.05 per ton - on strip mine coal \$7.55 per ton."

(Exhibit 69)

The manner in which the new pricing method was employed was described, as follows, by Theodore Byck in his evidence:

"Q. . . . What was discussed at these meetings which you attended between 1950 and now?

A. Primarily arriving at the prices of selling our coal.

Q. What form did that take?

A. The discussion of our varying costs. We found that there was a great variation between our selling prices.

And we thought, -- we thought or [sic] arriving at some way of arriving at a price which we could all, more or less, be in line with. And I presented my own ideas of our own costs, and everyone else did, and we took an average, more or less, of our costs of handling. And that is how we based our selling price.

Q. You arrived at a figure which would be a handling costs figure?

A. Yes, I think I had something around \$4.30, or something like that. That was our handling costs, to handle a ton of coal. We added that on to the cost of our coal, and 10 per cent for our profit.

Q. You added that to the total which you got?

A. Yes.

Q. And that was the selling price?

A. That was the basis of these meetings.

Q. Did all the other dealers who attended also submit their costs?

A. Pretty well, yes. Probably some of them did not have actual knowledge of costs. I think a lot of them did not have any knowledge of their costs.

Q. Did they take part in the discussions, as well?

A. Yes, to whatever extent they could.

Q. And, at any rate, as the result of these discussions, a figure was arrived at?

A. A figure was arrived at, and a basis arrived at as to how we would arrive at a certain price for certain coals.

Q. Just a minute; you did arrive, first, at a figure which you called your handling costs figure?

A. Yes, handling costs.

Q. The idea was that this would be added to the mine price, plus the freight, plus any exchange?

A. Yes.

Q. And you decided also that you would add to the complete total the figure of 10 per cent for profit, is that right?

A. Yes.

Q. And the resulting price was the price which would be used by the dealers?

A. Yes, that would be the price on that list, there. That is how we arrived at those prices."

(Evidence, July 15, 1953, pp.236-8)

The formula for establishing uniform retail prices adopted in December, 1951 remained unchanged thereafter, except that the handling charges of \$4.00 per ton on lump coal, \$3.50 per ton on egg and nut Canadian coals, etc., have been increased by 50¢ per ton in each case so that the addition to be made became \$4.50 per ton on lump coal, \$4.00 per ton on egg and nut Canadian coals, and so on.

4. Break-down of Arrangements for Pricing Stoker Coal

The circular letter of April 23, 1947 (Exhibit 16) indicated that a margin of \$3.50 per ton had been established for sales of stoker coal in less than carlot orders. This arrangement apparently continued until September, 1950, when an effort was made to maintain an agreement on a minimum quantity for competitive pricing by lowering the limit to 25 tons. A circular sent to coal dealers after a meeting on September 15, 1950, made the following reference to the new arrangement:

"It has been agreed that stoker coal will sell at the retail price on all deliveries under twenty-five tons.

On quantities to be delivered over twenty-five tons the price is to be on a competitive basis.

The new prices went into effect on Sept. 1st."

(Exhibit 10)

Price lists circulated under date of August 30, 1950 (Exhibit 57) contained a note in regard to stoker coal to the same effect, but it would appear that the price list had been dated back following the meeting of September 15. The quantity of 25 tons established as the dividing point between competitive and uniform prices represented about one-half a carload of coal, so that the effect of the arrangement was to place all sales of stoker coal in excess of one-half a carload on a

competitive basis instead of sales in excess of a carload under the previous arrangement.

Although the arrangement made as to the pricing of stoker coal in September, 1950 was not withdrawn until more than a year later, the evidence indicates that it was not entirely successful in establishing a common practice among those dealers handling such coal. A notice of May 6, 1952, calling a meeting on May 9 contained the following reference to stoker coal:

"Re: Stoker Coal

Some of our dealers feel that 25 tons is too high a minimum tonnage for retail prices.

It has been suggested that we lift the minimum tonnage and make the stoker field competitive on any tonnage."

(Exhibit 76)

The meeting called for May 9 was postponed to May 12 (Exhibit 77), but no definite action was decided upon with respect to stoker coal. A further meeting was called for July 18, 1952 (Exhibit 83), and, in a circular to coal dealers under date of July 21, 1952, J. P. Downey made the following reference to stoker coal:

"All stoker coal is on a competitive basis as of now."

(Exhibit 40)

The following evidence was given by J. P. Downey in regard to the arrangement on stoker coal made in September, 1950 and the subsequent developments:

"Q. I refer you again to exhibit number 10. It states in the third from the last paragraph:

It has been agreed that stoker coal will sell at the retail price on all deliveries under 25 tons.

Do you remember that?

A. Yes.

Q. You remember that agreement being made?

A. Yes.

Q. Is that agreement in effect now?

A. No.

Q. When was the agreement discontinued?

A. It just never worked.

Q. It never worked from the beginning?

A. No.

Q. Did you ever make any further agreement with regard to the sale of stoker coal to be sold at retail prices?

A. No, I do not think there was any further -- that is, for establishing certain figures. I think we more or less agreed to disagree from there on.

Q. But at that time the members who were there were in agreement -- that is, the members listed in this exhibit as having been there -- they were in agreement at that time?

A. Yes.

Q. But since that time, you say, the agreement broke down, is that correct?

A. Yes."

(Evidence, July 15, 1953, pp. 287-8)

"Q. Now, I show you exhibit 76, which is a circular signed by you -- I should say that it is a letter signed by you, and addressed to Frank Byck and Son, dated May 6, 1952. This is a notification of a meeting, and there is a paragraph which says:

Re stoker coal. Some of our dealers feel that 25 tons is too high a minimum tonnage for retail prices.

You will remember that the previous agreement had been made in 1951 [sic 1950] in which that 25 tons limit was agreed to?

A. I recall that, yes.

Q. Is this the time that you say that the dealers decided that this 25-ton limit should be abolished; or had it been pretty well in a state of flux, and fairly well disregarded before that -- or what was the situation?

A. Yes, I would say that between the time that we agreed on the figure of 25 tons, and this date, that it was found that it did not appeal to several, and it had been slipping back and forth, and nobody seemed to be able to arrive at a figure.

Consequently the suggestion was made that we do away with the minimum, or change it, whichever the case may be.

Q. And the meeting, then, is to be held on May 9 for that purpose?

A. Yes.

Q. For the purpose of lifting the minimum?

A. To discuss it.

Q. To abolish it.

A. To discuss the situation and see what could be done about it.

Q. I show you exhibit number 40, a circular apparently from you, dated July 21, 1952, in which it is stated, in part:

All stoker coal is on a competitive basis as of now.

That is, presumably officially, as of July 21 that minimum was lifted, is that correct?

A. Yes.

Q. So that this suggests that a meeting was held and it was agreed that the thing would be abolished?

A. Yes."

(Evidence, July 15, 1953, pp. 292-3)

The next list of retail prices, dated August 1, 1952, circulated among coal dealers did not refer to prices of stoker coal (Exhibit 46).

Not all dealers were content with competitive pricing of stoker coal. In the spring of 1953, efforts were made to work out a new arrangement for an agreed markup on stoker coal. A circular to dealers, dated May 14, 1953, contained the following:

"At our meeting last night, May 13th, we decided that the arrangements made previously would remain in effect.

It was also decided that each member would draft a plan on stoker and submit same at our next meeting, which is called for Thursday, May 21st."

(Exhibit 42)

Mr. Theodore Byck gave the following evidence in regard to these meetings:

"Q. What was the discussion at that meeting?

A. I believe we started to discuss stoker coal again. And we adjourned with the idea that everybody -- when was the next meeting called?

Q. It was called on May 21.

A. We adjourned for a week, and in a week's time everybody would see if they could get suggestions of some way of arriving at a reasonable price on stoker coal.

Q. Was that as a result of some objection to the price at which stoker coal was being sold at that time?

A. No, not an objection as much as -- well, I know that, ourselves, we were not satisfied with the mark-up that we were getting. The competition in stoker coal is pretty keen.

Q. The purpose of the meeting was to try to get the price of stoker coal up, was it?

A. Yes, it was.

Q. To get your margin up?

A. Yes, to get the margin up. We are only working on about \$2 a ton. You will never get rich working that way. We are trying to get a reasonable mark-up on the coal. But as I say, the competition is pretty keen on that coal, and at that \$2 a ton nobody is making any money.

Q. Do you suggest that all the dealers did not go along with this proposal?

A. Nothing ever came of it.

Q. What do you mean by that? It was discussed, was it?

A. Yes, but there was not enough ideas there to arrive at a basis for arriving at a reasonable price.

Q. Did anybody refuse to raise his price? Was that the idea?

A. No. We wanted ideas of how to go about it. We tried it out once before. We had the idea of basing it on 25-ton car lots, or carload lots, and we threw that out. We threw the whole idea out, and decided to get together again and try to get a further basis for a reasonable mark-up.

Q. You say that nothing came of it?

A. No. Downey and Holland and myself were the only ones who showed up for that.

Q. Holland and Downey and yourself?

A. Yes, only three of us showed up for that last one, and nothing came of it."

(Evidence, July 15, 1953, pp. 257-8)

5. Arrangements for Establishing Scale of Summer Prices and their Duration

In recent years the coal dealers in the Timmins-Schumacher area have arranged to have a scale of prices in effect during the summer months which was lower than the scale of prices established for the ensuing heating season in order to encourage coal users to make purchases during the slack period in the fuel business. This practice appears to have arisen because some mines, particularly Western Canadian mines, were prepared to give dealers a discount on the purchase of coal during the off-season. Generally, the mines making a summer reduction would give a discount of, say, \$1.00 per ton beginning in May, and then reduce the discount to, say, 50¢ per ton by mid-summer.

The evidence is not clear as to the exact procedure followed by coal dealers in the Timmins-Schumacher area in establishing summer prices in each year, but it would appear that, in one or more years prior to 1952, the practice was to make a reduction of \$1.00 per ton in the retail price from May to August, while in more recent years the practice may have been to make a reduction of \$1.00 per ton plus the amount of the mine discount to the dealer. Mr. J. P. Downey described the practice of establishing summer prices in the following way:

"What we have always endeavoured to do is, whatever the

mine gives us in the summer delivery price, as it were -- we have been in the habit of adding a comparable amount, or more -- but usually it is a dollar -- of our contribution to the summer prices, so as to encourage the people to take coal in during the summer months; because our biggest difficulty in handling coal in this community is snow drifts and storms, and so on, that we have to buck . . ."

(Evidence, July 14, 1953, pp. 83-84)

The arrangements made among the coal dealers with respect to summer prices embraced, not only the level of prices established for such business, but also the period during which such prices would be offered and the conditions for deliveries at such prices. Under date of July 31, 1951, J. P. Downey sent out a notice of a meeting to be held on August 2 (Exhibit 33), and, under date of August 3, 1951, the following notice on the letterhead of John W. Fogg Limited was sent out:

"TO ALL COAL DEALERS:-

Summer prices stop on August 5th and Winter prices go into effect on Monday, August 6th, 1951.

Deliveries of coal sold at Summer prices must be completed by August 31st, 1951.

Seven Dealers were represented."

(Exhibit 37)

In giving evidence in regard to this document, Mr. Downey stated:

- "A. That means that we have arrived at a time when the privilege of buying coal at summer reduced prices has come to an end. From then on orders received or accepted will have the current winter price listing.
- Q. What is the basis of your sending out these notices to the dealers?
- A. So that we will all have a working knowledge of the dates arrived at.
- Q. And how were those dates arrived at?
- A. Purely by conversation.
- Q. With whom -- conversation among whom?
- A. Among the rest of the dealers.

Q. And this second paragraph states:

Deliveries of coal sold at summer prices
must be completed by August 31, 1951.

Was this arrived at in the same way?

A. Yes.

Q. Then it says, 'Seven dealers were represented'; that refers to a meeting, does it?

A. Yes. At a previous meeting several of us were there, and we agreed that -- well, just what it says there -- 'deliveries of coal sold at summer prices must be completed by August 31, 1951'."

(Evidence, July 14, 1953, pp. 93-4)

Somewhat similar procedure appears to have been followed by the group of coal dealers in arranging for summer prices in 1952. The following was contained in a notice bearing the date July 21, 1952:

"TO ALL COAL DEALERS:

It is requested that all coal sold on the Summer programme be delivered by August 15th next.

August 1st is the start of our Winter programme.

. . ."

(Exhibit 40)

An undated notice, copies of which were found on the premises of several dealers, may refer to the method of establishing summer prices either in 1952 or 1953, as the evidence is not clear as to the year to which it related. The notice read as follows:

"To All Dealers:

Summer prices are made up as follows:

Winter Mine price

Freight rate to Timmins

(Plus 4.00 for Lump

Handling (or 3.50 for Egg and Nut
Estimated (or 4.50 for Pocahontas
Costs (or 3.00 for Stoker

Plus 10% of Total costs

to nearest quarter

Total of (Discount 1.00 from dealer

these two (Discount in dollars from mine

We will graduate the mine discount
per month as they do."

(Exhibit 11)

A price list headed "Retail Summer Prices - May 1, 1953 - Ending August 1, 1953" (Exhibit 155) also appears to have been circulated among the coal dealers.

Joint advertising through the press and radio was undertaken by the coal dealers in the summer of 1952 in an effort to stimulate off-season purchases by coal users at the summer prices. Some dealers apparently felt that they did not share equally in whatever additional business may have been produced by the joint advertising, and the arrangement was not continued the following year.

CHAPTER IV

COAL DEALERS SEEK ASSISTANCE OF WHOLESALERS TO LESSEN COMPETITIVE SELLING

The informal association of coal dealers in the Timmins-Schumacher area did not have any effective sanctions in its own power to secure observance of the arrangements made as to common retail prices and conditions of sale. There was, of course, the expectation that undertakings made by joint arrangement would be observed, and the influence of the group could be brought to bear upon any dealer who failed to do so.

Mr. J. P. Downey gave the following evidence in regard to the preparation and observance of the price lists:

- "Q. I stated in my summation that the prices which you prepared and distributed were arrived at as the result of discussions which took place at meetings with other dealers in Timmins?
- A. That is right.
- Q. And you say that, although you distributed these price lists, you yourself are not able to say whether they were followed or to what extent they were departed from -- if they were departed from?
- A. That is right.
- Q. Would it be correct to say that if there were any major departures you would know about it?
- A. I would, yes.
- Q. And if there were any major departures there would not be much point in continuing to have meetings to discuss these matters and to issue price lists?
- A. Well, that is a matter of opinion.
- Q. Well, I take it that this system must have worked with some degree of success or you would not have continued it?
- A. That is right."

(Evidence, July 15, 1953, p. 279)

When he was being examined in regard to one arrangement for the sale of stocker coal, Theodore Byck gave the following evidence as to the manner in which arrangements among the dealers were observed:

"Q. How long was that agreement kept?

A. Probably until our next meeting.

Q. Do you mean until it was mutually decided otherwise?

A. No; this association has not got along on the best of terms, at times. And I presume in some cases that would not last any more than -- well, by the time the fellow got out the door. But it would probably be in effect fundamentally until our next meeting.

Q. Was there any effort made to keep this in operation?

A. There was, yes. We did try to abide by any arrangement we made at those meetings."

(Evidence, July 15, 1953, p. 241)

In a notice dated November 1, 1950, prepared by J. P. Downey and requesting attendance at a meeting on November 3, the following reference was made to the nature of the meeting:

"This is an important meeting. Some changes appear necessary in order to impress certain people."

(Exhibit 29)

In his evidence in regard to this paragraph, Mr. Downey stated:

" . . . Well, that would mean that, after having sat down as a group and agreed to do something by saying, 'O.K.; we all think this is a good idea' -- somebody decided, 'Oh well, we just will not do that.' So, in that case, we would ask that man, specifically, whoever it happened to be at the time, what his intentions were. 'What are we doing that you do not like. Let us know. Let us talk it over. Let us find out what the trouble is. Are we wrong or are you wrong? '"

(Evidence, July 14, 1953, p. 88)

When examined further, Mr. Downey's evidence was as follows:

"Q. It would appear that this sort of thing did not happen too often. Did you have many meetings like this?

A. No, I would not say so.

Q. Was it the only one?

A. No, I would say possibly over a period of four years, there might be at least five disagreements.

Q. But were those disagreements ironed out?

A. Purely and simply by discussion. And they are not all ironed out yet, by any means."

(Evidence, July 14, 1953, p. 89)

1. Action against Mirkovich Coal Yard for Reducing Prices on
McLeod River Coal

In addition to exerting what influence they could upon their fellow dealers, there is evidence that the group, or some members of it, sought, on occasion, the co-operation of wholesale suppliers in controlling the supply of coal to a dealer who failed to follow a selling policy acceptable to the group. Although it is indicated by the evidence that, in many cases, coal of comparable quality is available from several sources, it appears to be the case that in a particular market, there are certain brands of coal or coal from certain mines which become established in public favour. Household users seek their favourite brand of coal and will not readily accept a new brand or type. For this reason, a dealer who has been dealing in a widely accepted brand of coal will be in some difficulty if he is unable to continue to supply his customers with the particular brand desired. The possibility of such a situation was faced by George Blitva, of Mirkovich Coal Yard, in 1951, when other dealers complained about the prices at which he was selling McLeod River coal.

McLeod River coal has been a popular coal in the Timmins-Schumacher area, and W. J. Taylor & Son of Belleville, Ontario, have had the exclusive agency for the supply of this coal to dealers in this territory.

Some time prior to May 11, 1951, C. C. Taylor, of W. J. Taylor & Son, in company with T. Horne, at that time sales manager, Vancouver Island Coals Limited (distributing agents for McLeod River coal) visited Timmins and were informed by J. P. Downey and several other dealers of the organization of the group of dealers to set up a price structure on coal. During this visit, the dealers sought their co-operation

to assist in the maintenance of the price structure by dealers.

Complaints of price-cutting on McLeod River coal by Mirkovich Coal Yard had already been made by Albert Chalifoux to C. C. Taylor. Later, when Albert Chalifoux again complained to W. J. Taylor & Son by telephone, W. J. Taylor wrote to Chalifoux as follows on July 4, 1951:

"Referring to your recent telephone and your complaint about prices being cut on McLeod coal, from your conversation there was not much I could do with that information. You stated, of course, that you had taken the matter up with Mr. Downey, who is the head of your local organization and he would be writing. Up to this time I have had no word from him whatever.

We are most anxious Albert at all times to assist and we dislike very much to see any dealer whom we are supplying using our McLeod coal on a cut-rate basis. We feel we have a quality product and wish very much to see a dealer make a fair margin of profit but of course, without something real definite backed up with evidence to prove these charges we would not care to take any action.

I would take it that perhaps the man you speak of would be Mirkovich Coal Yard and I am surprised at this because we have done business with them for many years and when Mike was there himself, he handled a lot of coal. However, I presume in due time we will be hearing from you further."

(Exhibit 254)

The coal dealers took up the matter of under-selling of McLeod River coal with George Blitva, operator of Mirkovich Coal Yard, at a meeting, and subsequently Blitva wrote to W. J. Taylor & Son, on July 25, 1951, and stated:

"Recently the Coal Dealers of the Porcupine Camp held a meeting. One dealer said that he wrote you that I was selling my coal cheaper than the other dealers. Then he produced a letter from you which said that I would be cut off from receiving McLeod coal if I didn't agree on the price with the other dealers."

(Exhibit 255, p. 1)

In a reply of July 30, 1951, to this letter, C. C. Taylor wrote:

"Regarding your last paragraph and the recent Coal Dealers meeting, we do not recall writing any dealer that we were going to cut you off for McLeod coal. The selling price of McLeod is left entirely in the dealers hands. However, we expect the dealers to conform with their local association prices and will do anything to keep the prices in line where all dealers make a fair margin of profit, after all, there is no reason why one should sell the coal at a loss. You won't sell any more tonnage and certainly won't make any profit. . . ."

(Exhibit 255, p. 2)

On August 3, 1951, J. P. Downey sent a registered letter to Wm. Taylor, on behalf of the Timmins-Schumacher group of dealers, and asked that action be taken to prevent Mirkovich Coal Yard dealing in McLeod River coal as long as this dealer was under-selling the others. Mr. Downey's letter was as follows:

"We, of the Retail Coal Dealers Association in Timmins, have come to the point where we must ask you to put one of our Dealers on your Black List, namely Mirkovitch [sic].

We have on several occasions, had Mirkovitch [sic] on the carpet about price-cutting and he has each time promised to stop his practice of under-selling.

On July 9th, at a meeting of the Association he freely admitted that he was under-selling all of us and said that he would continue to do so. We then decided to expel him from the Association. However, he did ask for another chance and promised to stay in line. Immediately following that meeting and up to the present time, he has continued his under-selling practice.

On August 2nd, we held another meeting and as a result, we are now asking you to carry out the arrangements whereby Mirkovitch [sic] no longer receives McLeod River Coal.

It is possible that he may realize in the not-too-distant future his error and if so, we would consent to his re-instatement."

(Exhibit 256, p. 1)

On receipt of the letter from Downey, W. J. Taylor wrote to Mirkovich Coal Yard stating that, if the price-cutting continued, W. J. Taylor & Son would have no alternative but to abide by the wishes of the coal dealers and discontinue shipping McLeod River coal to him. Mr. W. J. Taylor's letter of August 7, 1951, was in the following terms:

"Further to our exchange of letters in which you advised some difficulty you had with your local Association regarding retail prices of McLeod River, we are today in receipt of a letter from J. P. Downey, the President of your local Retail Coal Dealers Association at Timmins, which of course, takes in the area of Schumacher, South Porcupine and Porcupine, and the Association have agreed 100%, that due to your continued price-cutting, they request that we discontinue servicing you with McLeod coal.

Now, George, this is a serious situation and after many years of supplying your Company, both in the days when Mike operated and yourself, we feel you are taking the wrong course in continuing as a free-lance against the other dealers in your Association.

You understand McLeod River have in the past made special stocking terms to help you dealers and also have spent considerable money in advertising throughout your area and we have no alternative if this is to continue but to abide by their wishes and that is discontinue shipping McLeod to your account.

You now have two cars rolling. This coal belongs to you and of course, without your consent, we dare not divert, but this completes our bookings until we hear something further from you.

I do not wish to give you any fatherly advice, but as previously stated, I think you are taking the wrong attitude."

(Exhibit 256, p. 5).

Mr. W. J. Taylor replied on August 7 to Mr. Downey's letter and said:

"We have your registered letter of August 3rd regarding Mirkovich and we are enclosing herewith copy of your letter to him this date and I assure you that we will do everything possible to cooperate. Hoping to be advised at an early date how things are progressing."

(Exhibit 256, p. 4)

Also on August 7, C. C. Taylor wrote to J. P. Downey referring to the correspondence between Downey and W. J. Taylor in regard to Mirkovich Coal Yard and stating that "We will co-operate to the letter as far as Mirkovich is concerned." (Exhibit 256, p. 6).

This was primarily an appeal for coal orders from Downey and other dealers in view of the purchases which had been made previously by Mirkovich Coal Yard, and the possible loss of business which might result from cutting him off.

On August 9, 1951, the following letter was sent to W. J. Taylor & Son by Mirkovich Coal Yard:

"I wish to acknowledge receipt of your letter of the 7th.

Since the July Retail Coal Dealers meeting, I have been selling my McLeod Coal at the set Retail price, as I was warned then if I did not my further orders would be cancelled, and I still want to be receiving McLeod Coal.

I have sold a lot of McLeod coal during July, as many of my customers in Schumacher and South Porcupine thought it wiser to have their supply in now than to wait till fall and have difficulty in getting it like last year. One dealer said I sold so much coal because I sold it a lot cheaper but it is not true, as I sold it the same price as they did.

Will you please book me for the two car[s] of McLeod Lump for the month of September."

(Exhibit 258)

While George Blitva stated in this letter that he was observing the retail price established by the group of coal dealers, he gave verbal evidence that he had been selling at lower prices (Evidence, July 16, 1953, p. 436).

W. J. Taylor wrote, in reply, to Mirkovich Coal Yard, on August 13, 1951, indicating that orders for more coal could not be accepted until the question of price-cutting was straightened out with the other dealers. Mr. Taylor's letter was as follows:

"I acknowledge yours of the 9th and as previously explained, your August allowance has been shipped and for the present at least, we cannot accept this two car order for September. As the matter stands now, it is entirely up to yourself and the Association to put this matter straight and I would suggest you contact Downey and advise as early as possible.

We certainly don't wish to discontinue shipping you McLeod coal. Please give this your prompt attention."

(Exhibit 259)

In sending a copy of his reply to Mirkovich Coal Yard to Downey on August 13, W. J. Taylor expressed some concern over continued withholding of supplies of coal from George Blitva. At one point in his letter he said:

"Of course, I feel now, until we have some word from you as Head of the Retail Coal Association, we cannot reinstate him and I don't think it is your wish to put this man out of business. . . ."

(Exhibit 261)

Action was then taken by George Blitva to satisfy the other dealers that he would observe the prices established for McLeod River Coal by agreeing to do so at a meeting on August 27, 1951, called at his request. Notice of the meeting was given in the following form:

"August 23, 1951

TO ALL COAL DEALERS:

Please be advised that a meeting is called for Monday, August 27th, 7:00 P.M., at the Lang Avenue Office of John W. Fogg Limited.

Mr. George Blitva of Mirkovitch [sic] Coal Yard has requested this meeting.

Yours very truly,

JOHN W. FOGG LIMITED

JPD/LH

(Sgd.) J. P. Downey"

(Exhibit 66)

On August 28, 1951, J. P. Downey sent the following telegram to W. J. Taylor & Son:

"PROCEED WITH SHIPMENTS TO OUR ESTEEMED FRIEND
CONFIRMATION IN MAIL."

(Exhibit 262)

Mr. Downey's letter, dated August 29, read as follows:

"Please be informed that the Porcupine Coal Dealers Association wish to have Mirkovitch [sic] re-instated with your principal.

We are exceedingly grateful to you and Mr. Horne for your splendid co-operation in this matter."

(Exhibit 265)

Mr. George Blitva gave the following evidence in regard to the meeting with other dealers:

"Q. Let us see if this is correct; you were cutting prices a little bit in McLeod River coal in 1951?

A. Yes.

Q. And the dealers found out about it?

A. Yes, they find out I was a little cheaper than they were.

Q. Yes; and they had a meeting, did they?

A. Yes, they had a meeting.

Q. And they complained to you?

A. Yes.

Q. And you say that Chalifaux [sic] wrote to McLeod River?

A. Yes.

Q. And asked that you be cut off?

A. Yes.

Q. And were you cut off?

A. I was cut off a while.

Q. Cut off for a while?

A. Yes, cut off for a while, until the next meeting.

Q. For how long would that be?

A. About two months.

Q. Two months you were cut off?

A. Yes.

Q. You could not get McLeod River?

A. No, and I was lucky that was in the summertime.

Q. It was August, was it not?

A. Yes.

Q. And you asked to have another meeting in August?

A. Yes.

Q. And at that meeting you agreed to abide by the prices, is that what happened? You said you would follow the prices, did you?

A. I was cut off - there was pretty nearly all the coal dealers there, nine of us, at the meeting. They go by vote what they will do, cut me off, or let me have coal again. There was a majority for me. But I have to swear to them I will keep to their prices."

(Evidence, July 16, 1953, pp. 437-8)

The evidence of J. P. Downey in regard to the situation of George Blitva and the meeting approving his reinstatement was as follows:

"Q. Was Mr. Blitva, in fact, cut off?

A. Yes, he was.

Q. For how long?

A. For a very short time.

Q. Did he come back into line, then?

A. Yes, he did.

Q. He did. I show you exhibit number 66 dated August 23, 1951, a notice of a meeting signed by you. I would refer you to the last paragraph which says:

Mr. George Blitva of Mirkovich Coal Yard
has requested this meeting.

What was the meaning of that?

A. It means that George Blitva requested me to call a meeting of the group to discuss his problems.

Q. And his problem was what?

A. His problem at the time was the loss of McLeod River coal.

Q. And --

A. So I concurred with his wishes.

Q. Was the meeting called?

A. I sent out that circular notice. The meeting was held, all right, so far as I can recall.

Q. What was decided? Did Mr. Mirkovich agree -- did Mr. Blitva agree to come into line?

A. Yes, he did.

Q. And was he then put back in --

A. Yes, --

Q. -- and the list of --

A. As a group we requested the McLeod River people to re-establish, as it were, George Blitva in their graces.

Q. And did you, as representing the group, get in touch with Mr. Taylor?

A. I imagine I would have done so, because of the fact that I took care of most of the correspondence.

Q. And he was put back?

A. Yes."

(Evidence, July 15, 1953, pp. 290-1)

There is evidence that, while W. J. Taylor & Son refused to accept orders for shipment of McLeod River coal to George Blitva at Schumacher until approval was given by the group of coal dealers, they were disturbed over the possibility that such shipments might have to be withheld for some time, and considered ways in which they could give the appearance of co-operating fully with the group of dealers and at the same time not refuse indefinitely making shipment of McLeod River coal to George Blitva. A procedure which apparently received some consideration by W. J. Taylor & Son was the billing of coal to George Blitva at some point other than Timmins or Schumacher.

However, the acceptance by Blitva of conditions approved by the group of dealers and the consequent release of W. J. Taylor & Son by the latter from the undertaking to withhold shipments of coal to George Blitva obviated the necessity of finding an expedient.

2. Refusal of Empire Hanna Coal Division to Make
Direct Sales of Coal to Albert Chalifoux

Empire Hanna Coal Division, The M. A. Hanna Company, is the exclusive agent in Canada for Cavalier coal produced in the United States. For about 20 years prior to the fall of 1952, Herbert Fuels Limited, Cobalt, Ontario, was the company's sole distributor in Northern Ontario except that Empire Hanna made direct sales to John W. Fogg Limited in the Timmins-Schumacher area. Other dealers who handled Cavalier coal in that area secured supplies from Herbert Fuels Limited which established its own prices for such sales as a wholesale dealer.

In the fall of 1952, Empire Hanna cancelled the arrangement with Herbert Fuels Limited and began to deal directly with retail coal dealers in Northern Ontario. It continued to do business with Herbert Fuels Limited but its price to the latter became the same price at which coal was sold to individual retailers so that if Herbert Fuels Limited was to make any sales of Cavalier coal with a margin of profit its price had to be higher than that of Empire Hanna. Under its new policy Empire Hanna made sales of Cavalier stoker coal to four only of the Timmins-Schumacher dealers, namely, John W. Fogg Limited, Albert Chalifoux, Consumers' Co-operative Society Limited and Superior Fuels. The first three dealers with Frank Byck & Son and Mirkovich Coal Yard are reported to be the only dealers in the area who handle stoker coal in substantial amounts.

Direct purchases of Cavalier stoker coal from Empire Hanna by Albert Chalifoux under the new arrangement amounted to approximately 800 tons by April, 1953. Early in May, Chalifoux ordered two cars of coal from Empire Hanna which were delivered, and later in the month ordered a third carload of Cavalier stoker coal. This was accepted but J. F. Brooke, vice-president, Empire Hanna Coal Division, The M. A. Hanna Company, Toronto, wrote the following letter on May 29th to Chalifoux in regard to further dealings:

"For the time being at least we are not prepared to supply you with further coal beyond the car of Cavalier King Stoker coal you ordered from us on May 23rd.

We are letting you know this now so that you may make other arrangements before the season is too far advanced."

(Exhibit 13)

It will be recalled from evidence reviewed earlier in this report that after several attempts to maintain a common arrangement among the dealers with respect to the sale of stoker coal this type of coal was removed from the arrangements in the summer of 1952 and thereafter was on a competitive basis. It will also be recalled that attempts to reach a new agreement among the dealers on stoker coal were made in May, 1953. In the words of Theodore Byck:

" . . . We wanted ideas of how to go about it. We tried it out once before. We had the idea of basing it on 25-ton car lots, or carload lots, and we threw that out. We threw the whole idea out, and decided to get together again and try to get a further basis for a reasonable mark-up."

(Evidence, July 15, 1953, p. 258)

The matter was brought up at a meeting on May 13th, and each dealer was to draft a plan and submit it at the next meeting on May 21st. According to Mr. Byck's evidence, only two dealers besides himself turned up for the meeting and nothing was done. The three dealers represented were Frank Byck & Son, John W. Fogg Limited and Superior Fuels.

Mr. Byck was examined further as to whether any suggestion was made at the meeting on May 13, 1953, of similar action to that taken two years earlier in the case of Mirkovich Coal Yard, and he gave the following evidence:

"Q. Was there any suggestion on this occasion that one of the wholesalers would be written to or interviewed, and pressure put on, in the same way that pressure was put on the Mirkovich coal yard?

A. No, it was not suggested at the meeting.

Q. Was it suggested at any time?

A. It was perhaps discussed.

Q. By whom?

A. Outside of the meeting.

Q. By whom?

A. By Downey and myself -- by Fogg and myself.

Q Did you get in touch with the vice-president of Empire-Hanna and arrange for an interview with him?

A. No, I did not.

Q. Did he get in touch with you?

A. Yes.

Q. Did he have an interview with you?

A. Not alone, not-- oh yes, he did.

Q. He did?

A. Yes, He and Mr. Simpson.

Q. Mr. Simpson is an employee of Empire-Hanna?

A. Yes.

Q. Sales representative?

A. Yes.

Q. What was discussed at the interview?

A. We discussed if we -- if three dealers would take over and sell Cavalier stoker coal.

Q. And did you make representations to either of those two gentlemen at that time with regard to the situation in stoker then existing?

A. Yes.

Q. What form did those representations take?

A. I told them there were certain dealers in this town cutting prices considerably.

Q. You were speaking to Mr. Brooke?

A. Yes, Mr. Brooke.

Q. What did he say about that?

A. He said he would see if some set-up could be arrived at where they would have some outlets; and they arrived at three.

Q. Who were the three?

- A. The three were Fogg, Consumers and Byck.
- Q. Were you at any other interview with Mr. Brooke at which any other dealer was present, or anybody else?
- A. I was at another interview at Fogg's one time.
- Q. Who was present at that interview?
- A. Jack Downey and myself and Mr. Brooke and Mr. Simpson.
- Q. And what was discussed there?
- A. Tonnage.
- Q. Tonnage? What form did the discussion take?
- A. Just about the tonnage -- approximately how much tonnage the three of us would be able to take.
- Q. That is, he interviewed you with a view to arranging that you should be the person[s] to handle Cavalier stoker coal?
- A. Yes, and approximately the tonnage we would be able to handle.
- Q. Were there just the three of you, or was Consumers ---
- A. Mr. Haapanen was not there, no.
- Q. And were you two able to satisfy him that you could satisfactorily handle his coal?
- A. Yes, that is right.
- Q. I understand from what you say that the purpose of interviewing Mr. Brooke was to try to put a stop to this price cutting that was going on in Cavalier stoker coal sales?
- A. Yes.
- Q. And as a result of that discussion three dealers in Timmins were made the sole handlers of Cavalier stoker coal?
- A. That is right.

Further in his evidence Mr. Byck said that he had previously complained to Mr. Simpson, northern salesman for Empire Hanna, about price cutting and that he was told that Mr. Simpson would be returning to Timmins in a few weeks with Mr. Brooke and that they would discuss the problem with him at that time (Evidence, July 15, 1953, pp. 264-5).

Mr. Downey also gave evidence as to an interview which he had with Mr. Brooke of Empire Hanna some time after the calling of the meeting to discuss the sale of stoker coal. His evidence included the following:

"Q. Did you know at that time [the time of the meeting of May 13] that there was a plan proposed by which certain of these dealers should constitute the list of those handling Cavalier stoker coal, and that you and Byck and Consumers Co-operative would be the sole distributors in this town?

A. No.

Q. Do you say that you know nothing about it?

A. No, not at that time.

Q. Did you ever make a protest to the wholesaler of Cavalier coal against the price cutting methods existing in Timmins?

A. I don't think I made a protest. The distributor of Cavalier coal went through a change. Empire-Hanna people are the importers of Cavalier coal, and at one time Bob Herbert of Cobalt was their northern representative on Cavalier coal.

Much to my surprise an Empire-Hanna representative called at our office and told me of the change that they were making in their organization.

Q. When was that?

A. Oh, this would be following that meeting that we had, where Chalifaux [sic] brought up the stoker matter.

Q. The meeting of May 13, 1953, is it?

A. No, following that -- yes, following. There was another meeting called after this one, after May 13.

Q. Exhibit 92; is that the one you mean?

A. Yes.

Q. You say you were told -- by whom were you told?

A. It was following May 21. Fred Brooke, the vice-president of Empire-Hanna, came into my office and -- well, I don't know -- it was after that date that Fred Brooke came to my office, and told me of the changes being made by their company in the handling of their coal in this territory.

Q. Yes? What were those changes?

A. That they had discarded their northern representative, and were going to have their own representative call, on the dealers, throughout this northern Ontario country.

Q. Anything else?

A. And wanted to know if we were interested in buying this coal.

Q. Yes?

A. I said we were.

Q. Had you handled it previously?

A. Yes, we have handled their coal for years and years. We always bought it from those people.

Q. What was his purpose in making this call, making this offer to you? What was the difference in the offer?

A. We specialize in Crown Royal stoker coal, and our purchases of Cavalier were diminishing rapidly -- not in any great quantity, but we were slowly and surely throwing it out of the window, as it were, and we were not interested in supplying it any longer. We were arriving at that point.

Q. What did Mr. Brooke offer you that convinced you that you should handle it?

A. I asked him what arrangement he was going to make for the distribution of the coal in this community, and he said he did not know, that he was endeavouring to get around and get acquainted with the various dealers, and that some time later on we would know what he could do with his coal, or coals.

Q. He made no promise to you?

A. No.

Q. Even though he was the one who was anxious to sell it, and you were not very anxious to buy it?

A. That is true, yes.

Q. But, since that time, you have accepted the proposal to be one of the three exclusive dealers in Timmins, is that correct?

A. Yes, that is right. But my objection to handling their coal was because of the antics or the ethics, the business ethics, of one of their dealers in this community.

Q. Who was that?

A. Chalifaux [sic].

Q. And did you tell Mr. Brooke that?

A. I told Mr. Brooke that if he sold Chalifaux [sic] I was not interested in his coal, that we would be very glad to get out of it, entirely, and let Chalifaux [sic] have it all to himself.

BY THE COMMISSIONER:

Q. What do you mean by 'business ethics'?

A. Well, his methods of doing business. I just do not like them. I do not think he operates in any kind of a manner that is fair to anybody else. And I just don't like the way he does business. So, anything he handles, I would get out of it just as fast as I can -- whether it is Cavalier, or anything else.

BY MR. MacKAY:

Q. Now, you say Mr. Brooke came to town and wanted to sell you coal, and you said that you would not buy his coal so long as he sold it to Mr. Chalifaux [sic]?

A. Well, now --

Q. Is that the purport of what you said?

A. Yes, If Empire-Hanna were going to continue to sell

their coal to Chalifaux [sic] -- Chalifaux [sic], in particular -- that I would not be interested in his coal any longer.

Q. And who made this proposal for the three firms, that they should become the exclusive dealers? Did you make that proposal, or somebody else?

A. That is the solution they came out with, that they would like to have two or three representatives in the community. They told Consumers, Byck and ourselves, if we would buy. I had no hesitation in saying that I would most certainly gladly buy their coal, with those people handling it.

(Evidence, July 15, 1953, pp. 301-4)

Mr. C. M. Haapanen, of the Consumers' Co-Operative Society Limited stated in evidence that he had not met Mr. Brooke in May, 1953, and that at no time had he had a discussion with him about what dealers might be supplied by Empire Hanna. Mr. Haapanen said that he had made a reciprocal arrangement with Frank Byck & Son and John W. Fogg Limited whereby each would have the privilege of drawing on the others' stock of Cavalier coal at an agreed price if any one of the three ran short (Evidence, July 16, 1953, pp. 421-2). The terms of this arrangement were set out in a document, dated July 7, 1953 (Exhibit 151, p. 9), found in the files of John W. Fogg Limited, and a copy on the premises of Frank Byck & Son (Exhibit 103).

The decision of Empire Hanna to discontinue selling to Albert Chalifoux was made known to him, as has already been noted, by a letter from Mr. Brooke on May 29, 1953. By referring to company correspondence, Mr. Brooke was able to indicate during his examination that he had called on dealers in Timmins on May 25 or 26, and had solicited business from Byck and Downey. His action in writing to Chalifoux was taken, therefore, shortly after his visit to Timmins. Mr. Brooke, however, did not recall any discussion with Byck about price-cutting by certain dealers or any statement to him by Downey that, if Empire Hanna sold to Chalifoux, John W. Fogg Limited would not handle Empire Hanna coal. In his evidence, J. F. Brooke denied that he had cut off Chalifoux because of the representations made by either Byck or Downey, and said that his decision was based on the opinion he had formed after visiting Chalifoux's place of business in the fall of 1952, and because of Chalifoux's complaints about the filling of his orders. When asked why he did not act when he first secured the unfavourable impression of Chalifoux's coal operations, J. F. Brooke gave the following evidence:

"BY THE COMMISSIONER:

Q. Can you give a reason why at that particular period,

where you say you gathered that most unfavourable impression from the appearance of Mr. Chalifaux's [sic] establishment, and his set-up generally, -- tell me why you did not cut him off right away, rather than wait until May 29, 1953, to do it -- some eight months later?

- A. We did not think it was fair to cut him off in the middle of the season. As I said in my letter, we were writing later to give him a chance to make other arrangements."

(Evidence, July 17, 1953, pp. 516-7)

The reason so stated is difficult to reconcile with the actual sequence of events and the actions of the company prior to May 29, 1953. It will be noted that, according to his explanation, Mr. Brooke formed his impression of Chalifoux's operations during a visit to Timmins in the fall of 1952 after the arrangement for exclusive representation by Herbert Fuels Limited had been terminated, but before Chalifoux had placed any order for coal directly with Empire Hanna (Evidence, July 17, 1953, p. 508). Empire Hanna, therefore, commenced to do business with Chalifoux after Mr. Brooke had allegedly formed his unfavourable impression of the dealer as a result of visiting the premises and talking with the proprietor. Notwithstanding this, the company continued to do business with Chalifoux on a substantial scale with no indication of reluctance or dissatisfaction.

Mr. Brooke said in evidence that Chalifoux continuously wanted to have advertising material (Evidence, July 17, 1953, p. 509), and, in a letter to H. N. Simpson, the company's northern representative, on February 27, 1953, Mr. Brooke suggested ways to supply some material, although he was not prepared to approve a proposal of Chalifoux for a joint advertising campaign. Mr. Brooke's letter was as follows:

"Albert Chalifoux - Timmins, Ontario

This customer telephoned me the other day and stated he was interested in advertising Cavalier coal. He thinks Crown Royal is nosing us out in Timmins and suggested we enter a newspaper campaign with him.

He also thinks that John W. Fogg is only 'using' us and purchasing as little Cavalier as possible.

I assured him that we considered Fogg a good customer for Cavalier and other coals.

I told him the next time you want [sic] to Timmins you would be very glad to discuss his ideas of advertising and I suggest that you try to satisfy him with the use of truck sign decals

and probably some of the metal truck signs which we have for Cavalier. However, we do not have any metal signs for Cavalier Queen.

I am rather reticent to getting involved in a newspaper campaign here because I doubt if it would pay off. In any case will you give some thought to the matter and talk to Mr. Chalifoux about it and let me have your comments."

(Exhibit 216)

It will be recalled that the understanding of Theodore Byck and J. P. Downey of the result of the discussions with J. F. Brooke in May, 1953 was that Empire Hanna would restrict its direct sales of Cavalier stoker coal to three dealers in the Timmins-Schumacher area, namely, Frank Byck & Son, John W. Fogg Limited and Consumers' Co-Operative Society, Limited.

On June 5, 1953, Superior Fuels sent the following inquiry to Empire Hanna in regard to Cavalier coal:

"I would like to get current prices (laid down) on Cavalier, King & Queen, and if you think there will be any advance in price say for July shipments

and would you please forward late analysis"

(Exhibit 232, p. 2)

The following reply, dated June 12, 1953, was sent by Empire Hanna to Superior Fuels:

"We received your letter of June the 5th, asking for the prices on both our Cavalier King and Queen Treated Stoker.

We deeply regret that we have no Cavalier of either size available for shipment. However, if you would like to send us your order for our Olga, so that we may have it in abeyance well ahead of the date of shipment, we will make every effort to get you a car."

(Exhibit 232, p. 1)

It will be noted that Superior Fuels at the time was not attempting to place an order for Cavalier coal but was merely inquiring as to prices and analysis. The reply of Empire Hanna gave no indication that Cavalier coal would be available in the future, or that any attempt would be made to secure a car as was suggested in the case of Olga coal. In response to a somewhat similar inquiry for a price list and analysis of Cavalier coal

made by John W. Fogg Limited on June 26, 1953 (Exhibit 233, p. 3), Empire Hanna sent a letter in reply on July 3, giving analysis and prices and stating: "This coal is available both from Midland Dock and the mines at Dunham, Kentucky" (Exhibit 233, p. 1). The difference in the replies to Superior Fuels and John W. Fogg Limited would be in keeping with the understanding of Byck and Downey that, prior to this time, a selection had been made by Empire Hanna of dealers whom they would supply, which selection resulted from discussions between Byck, Downey and Brooke in May, 1953.

The action of Empire Hanna in refusing to accept orders from Chalifoux after May, 1953 did not make it impossible for him to buy Cavalier coal. It has already been mentioned that Empire Hanna continued to sell to Herbert Fuels Limited, although at the same prices as to other accounts, and Herbert Fuels was prepared to sell to any dealer willing to pay its price. However, at the time of the inquiry Cavalier coal bought from Herbert Fuels Limited would cost the dealer 50¢ per ton more than the price charged direct accounts by Empire Hanna, so that if Chalifoux bought in this way he would be paying that much more than the price available to his three competitors on direct purchases from Empire Hanna. In view of the competitive situation reported to exist in the sale of stoker coal in the Timmins-Schumacher area such a difference in cost would be a serious disadvantage for a dealer attempting to maintain or increase his tonnage sales of stoker coal.

CHAPTER V

CONCLUSIONS

The foregoing chapters of this report have described the origin of and actions in connection with price-fixing arrangements among the Timmins-Schumacher group of coal dealers handling almost all the retail sales of coal in the area. It has been shown that a scale of uniform retail prices was agreed upon in 1947, and that this scale was revised from time to time subsequently by agreement so that a common basis would be maintained in establishing retail prices for sales to the public. It has also been shown that lists of retail coal prices worked out from the agreed scale of prices were prepared and circulated from time to time among the dealers in order to render the price-fixing arrangements more effective.

Of the approximately dozen firms which made up the group of coal dealers in recent years, four handled more than 70% of the entire retail coal sales in the Timmins-Schumacher area, and, of the four larger firms, the combined sales of two accounted for approximately half of the total of all dealers. The representative of one of these firms appears to have played the chief part in organizing the activities of the group in connection with the price-fixing arrangements and in circulating information among the group as to proposals and the outcome of discussions. It is clear from the evidence, however, which was given in a straightforward way by all dealers who were examined in the inquiry, that all who were members of the group participated and agreed in whatever conclusions were arrived at.

Only one class of coal sales is shown by the evidence to have been withdrawn from the price-fixing arrangements during the period covered by the inquiry. This was the sale of stoker coal which is frequently bought on large orders. Under the first agreed scale of prices, adopted in 1947, sales of stoker coal on carload orders or larger quantities were left on a competitive basis and, in 1950, sales of stoker coal in quantities of 25 tons or more (approximately 1/2 carload) were put on a competitive basis. Then in 1952 all sales of stoker coal were put on a competitive basis. This exception was not considered satisfactory by all members of the group, and attempts were made to bring sales of stoker coal back into the arrangement. No method acceptable to the group had been found by the summer of 1953.

The general method followed by the group of Timmins-Schumacher coal dealers in establishing uniform retail prices was to agree upon a margin or markup per ton to be added to the cost

of coal on the dealer's railway siding. The method adopted when the group was first organized in 1947 was the addition of one margin figure in the case of domestic coal or coke and another margin figure in the case of stoker coal. Subsequently, a more detailed classification of fuels was adopted with varying margins to be added to the laid-down cost of coal, and an over-all addition of 10% per ton to the nearest 25¢ was included to cover overhead and profit. These margin and profit additions were stated by witnesses to approximate the average of varying cost figures submitted by various dealers who could furnish such information. The effect of the arrangement for uniform markups, together with the circulation of price lists incorporating such markups, was to establish a common price for the same kind of coal among the dealers in the Timmins-Schumacher area in place of the independent determination of selling prices by the individual dealer which had been the case previously when coal was sold on a competitive basis.

That competition was suppressed by the price-fixing arrangements among the Timmins-Schumacher coal dealers, thereby depriving the public of the protection of selling prices determined on a competitive basis, is made strikingly evident by the fact that the coal dealers were unable to keep the sale of stoker coal within this price-fixing agreement. Competition in the sale of stoker coal was first limited by agreement among the coal dealers, but the control through joint determination of selling prices was then lessened and later abandoned. On other types of coal which are used more generally for domestic purposes, there was no relaxation of the arrangements to establish and maintain common prices and, in fact, efforts were directed to finding additional means to make them apply more effectively.

The control over prices exercised by joint arrangement among the Timmins-Schumacher coal dealers was an interference with free competition in that market. It has been repeatedly said by the courts that the basic principle of the legislation under which this inquiry has been made is "the protection of the public interest in free competition." This is not a declaration detached from consideration of the requirements of an open market; it is related to the fundamentals of our free enterprise system. In our system competition is the central feature; the necessary element to make an effective functioning economy. An essential part of the competitive functioning of the free market is competition in price. It is for this reason that the courts have consistently said that an agreement having for its direct object the adoption of a uniform price for a given commodity in any substantial sector of the market is, by its very nature, an agreement which is detrimental or likely to be detrimental to the public - because it eliminates free competition in the matter of price. Through the operation of such an agreement, price competition ceases to play its part in the market, and the public is deprived of the safeguard which would be provided by the normal play of competitive factors in the determination of prices.

A free economy is one which, by the very term itself, is opposed to a system under which prices are regulated or controlled. While exceptions may be made to this principle by public measures taken to deal with specific situations in which it is believed that public regulation rather than competition will best serve the public interest, as, for example, in the case of public utilities, such instances are clearly recognized as exceptions to the general principle. In such cases of public regulation, control is exercised on behalf of the public by a duly constituted authority, e.g., Parliament, the Government, or a public body appointed by and responsible to the representatives of the people.

Public regulation of this nature is an entirely different matter from the exercise of control by private interests and individuals in an attempt to avoid competition. Private control by interested parties is almost certain to be exercised on their own behalf, rather than that of the public, and consequently carries with it the likelihood of detriment to the public interest. Agreement among dealers and distributors of a given commodity to fix common selling prices is one form of private control which prevents the operation of an essential element in competition, and should normally be held contrary to the public interest. In view of the fact that control of prices by public authority is so much a departure from the basic principles of economic activity in a free market that it should be resorted to only in exceptional circumstances and then under the utmost safeguards from the public viewpoint, private control imposed by agreement among business interests on their own behalf is all the more repugnant to the basis of our competitive system. Such considerations apply particularly strongly in circumstances such as those disclosed in the present inquiry where the price-fixing agreement embraced so fully the retail trade in an essential commodity throughout the market area, and operated so directly in opposition to the principle of free competition.

Under conditions of free competition, goods and prices must meet the test of the market, where, in the opinion of both economists and jurists, the inter-play of competitive influences acts as an automatic and at the same time the best and safest regulator of prices. In a dynamic economy, methods of production and distribution and their costs do not remain static, nor do the requirements and preferences of the public. Competition in price offers an effective channel for the expression of the demands of the public for goods and services, and thus encourages the discovery of new methods and new products and the improvement of old. There are so many variable factors involved in the price structure that no fixed standards could be applied with certainty to establish what should be the market price of a commodity. Even if it were possible to determine what might be a fair price today, there would be no assurance that changing conditions might not make that price unfair (either too high or too low) tomorrow. The exercise of choice by both buyers and sellers under conditions of

free competition operates to bring the influence of competition to bear on market prices, and thus brings about those adjustments which will keep our economy healthy.

The price-fixing agreement among the coal dealers in the Timmins-Schumacher area for those branches of the coal trade which it embraced from time to time precluded the normal play of competition in the determination of prices. Those subscribing to the agreement handled all but a negligible part of the coal trade in the area and the local market was so situated that, for all practicable purposes, no competition could be expected from other directions. Furthermore, the arbitrary nature of the agreement and its operation interfered directly with the action of economic factors in the determination of selling prices. It has been represented by the members of the group of coal dealers that the margins which were added to cost prices were the average, to an approximate degree, of the costs of those members who could provide information as to their costs. The use of an average, even if determined on an accurate basis, would lessen the influence on prices of dealers with the most efficient operations and lowest costs and, equally important, the knowledge of dealers that they would be protected from competition at less than "average" costs would lessen the incentive, always present under competitive conditions, constantly to be striving to reduce costs and secure greater efficiency. The danger to the public interest, where prices are arbitrarily raised by agreement, is particularly strong when the commodity is an essential for many users. It is in evidence that increases were made in the markups agreed upon by the coal dealers in the Timmins-Schumacher area in more than one instance since the arrangements were first made in 1947. It was not argued that some increase in price would not have occurred in any case because of increased costs of handling coal but the safeguard of the public against unjustifiable increases in prices is removed when arbitrary markups are fixed by agreement. Moreover, it is evident from the fact that stoker coal was eventually removed from the agreement on common selling prices that the arrangements had the tendency and the effect of preventing competition in the sale of other coals.

In the circumstances, therefore, we are of the opinion that the arrangements to establish common prices in the retail sale of coal in the Timmins-Schumacher area among the group of dealers operated and were likely to operate against the interest of the public.

It has been shown by evidence reviewed in earlier chapters of this report that there were two occasions when the coal dealers, or some of them, found that competition in the sale of coal could not be controlled to their satisfaction through their own efforts and steps were taken to secure the assistance and co-operation of suppliers of coals in large demand in the Timmins-Schumacher area. The first instance of this kind disclosed by the evidence occurred in 1951 in the case of McLeod River coal, which was being sold on a competitive

price basis by one dealer. Efforts were first made by the group of dealers to persuade the one dealer to stop acting independently and to make his selling prices conform to those agreed upon by the group. When, in spite of these efforts, the one dealer continued to sell at lower prices, the suppliers of the coal in question were approached to cut off supplies to the dealer against whom complaints were made until he changed his selling policy in a way acceptable to the group. Previously the Timmins-Schumacher coal dealers had had discussions with representatives of the suppliers, and had been given assurance that such action would be taken when requested. In this instance, the immediate representative of the supplier of McLeod River coal acted promptly to advise the dealer that, if he continued to sell at lower prices, there would be no alternative but to abide by the wishes of the group of coal dealers and discontinue shipping McLeod River coal to him. Subsequently, when the dealer attempted to place an order, it was not accepted, and he was impressed that he should straighten matters out with the association of coal dealers. When, at a meeting of the group, called at his request, the dealer gave strong promises to abide by the prices of the group, the representative of the supplier was advised that the group approved of shipments being resumed. The extent of the pressure which can be applied on a dealer by combined action of his competitors and his supplier is clearly indicated in this instance. When the coal dealers were unable to secure complete adherence to their price-fixing agreements through their own efforts, they enlisted the support of a supplier of a coal in large demand, and by having the supply cut off from the dealer departing from the common selling prices, they were able to bring him back into line and re-establish the agreement to their satisfaction. Without such supporting action from the supplier the whole agreement might have broken down and conditions of free competition restored in the Timmins-Schumacher area.

The other instance disclosed in the evidence of a dealer being cut off from supplies of a popular brand of coal arose under circumstances of a different character. It will be recalled that after several attempts to limit the scope of the competitive selling of stoker coal, the group of coal dealers removed this class of coal from the price-fixing agreement. Stoker coal was handled in a substantial way by about half the members of the group, and, after a period of competitive selling of stoker coal, some of the dealers were anxious to find a new basis on which to establish a common policy in the sale of such coal. Attempts to find such a basis were made in the spring of 1953, but one of the principal sellers of this class of coal failed to attend a meeting called for the purpose, and nothing came of the attempts to secure agreement. At or about the same time, two other principal sellers of stoker coal complained about or took objection to the competitive selling of Cavalier, a popular brand of coal in the market, during visits of the representatives of the supplier to the Timmins-Schumacher area. These two dealers then entered into arrangements with the supplier of Cavalier to have the sale of this

coal restricted to three dealers only, including themselves. Shortly thereafter the dealer, whose selling policies had been objected to, was refused further supplies of this brand of coal which he had been handling in substantial quantities and which was in demand by his customers. It was represented to the Commission on behalf of the supplier that the action taken was the result of independent decision and that, even if the limitation of dealers had been made following representations by competitors, the supplier was only one of a number of importers or distributors handling similar types of coal. It is our opinion, on the basis of the evidence brought before us, that the supplier of Cavalier coal was influenced by the representations made by the two dealers in question, and that the action in cutting off supplies to the third dealer and in limiting the number of dealers who would be supplied was an attempt to meet the wishes of those dealers who wanted some action taken to restrict the competitive selling of stoker coal, particularly a brand of such coal in popular demand. It is our opinion that action by a supplier in such circumstances had substantial effect in lessening competition in the Timmins-Schumacher area, and was not in the public interest.

The evidence put before us in this inquiry leads us to believe that there would be a restoration of competition in the sale of coal in the Timmins-Schumacher area if price-fixing agreements such as those disclosed in this report were prevented, and if individual dealers were not deprived of supplies for engaging in competitive selling. It was represented on behalf of the group of dealers that, if their actions with respect to fixing common prices were improper, which was not admitted, they were taken by misguided people in a small market. It may be that the dealers did not appreciate fully the extent to which they were interfering with competition and depriving the public of the benefits of free competition to which they are entitled. Nevertheless, the users of coal in the Timmins-Schumacher area are entitled to whatever advantages may be secured in buying coal on a competitive basis, and the fact that the market may be relatively small in no way reduces the interest of the public in that area or diminishes the desirability of their having the safeguard of a free market.

(Sgd.) C. R. Smith
Chairman

(Sgd.) A. S. Whiteley
Member

(Sgd.) Guy Favreau
Member

Ottawa,
November 22, 1954.

